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AUG 7 2000

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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August 7, 2000

BY HAND DELIVERY

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Room TW-B204
Washington, DC 20554

94-129

Dear Ms. Salas:

Enclosed please find the original and four copies of an Emergency Petition for Waiver of the Subscriber Change Provisions of the Telecommunications Act of 1996 and the FCC's Rules. Also enclosed is an additional copy which I ask that you date stamp and return to my office.

Thank you.

Sincerely,

Yaron Dori (mae)
Yaron Dori

YD/mr

Enclosures

No. of Copies rec'd 0+4
List ABCDE

Before the
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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AUG 7 2000

In the Matter of)
)
Implementation of the Subscriber)
Carrier Selection Change)
Provisions of the)
Telecommunications Act of 1996)
)
Zone Telecom, Inc.)
Petition for Waiver)

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

CC Docket No. 94-129

**EMERGENCY PETITION FOR WAIVER
OF THE SUBSCRIBER CHANGE PROVISIONS OF THE
TELECOMMUNICATIONS ACT OF 1996 AND THE FCC'S RULES**

Zone Telecom, Inc. ("Zone"), by its attorneys and pursuant to Section 1.3 of the Commission's rules, 47 C.F.R. § 1.3, hereby respectfully requests a limited waiver of the Commission's authorization and verification rules, 47 C.F.R. §§ 64.1100-64.1190, to the extent necessary to enable the expeditious transfer of the interLATA subscriber base of The Furst Group, Inc. ("TFG") to Zone without first obtaining such subscribers' authorization and verification.

As demonstrated below, TFG is a failing company whose customers risk losing telecommunications service in the absence of the Commission's expeditious grant of this waiver request. Zone fully satisfies the Commission's good cause standard for securing a waiver of the authorization and verification rules. Thus, grant of this Emergency Petition is in the public interest. 1/

1/ See *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969).

BACKGROUND

Zone is an indirect wholly-owned subsidiary of e-Kong Group Limited (“e-Kong Group”), a Hong Kong-based Internet and telecommunications company that, through affiliates, engages in the resale of international telecommunications services in Hong Kong and Singapore. e-Kong Group provides service through a unique scalable and portable service portal that provides its customers with access to a wide range of international carriers at a single source, thereby enabling users to select the most competitive prices for their calls.

Zone is in the process of obtaining all requisite Federal and State regulatory authority relating to the provision of facilities-based and resold international, interstate and intrastate interexchange telecommunications services in the United States. ^{2/} As explained above, Zone's ultimate corporate parent, e-Kong Group, is a leader in the development and deployment of innovative competitive telecommunications service offerings that aim, above all, to provide customers with flexibility and choice. Zone will be guided by the same principles as it enters the telecommunications marketplace in the United States.

Zone has entered into an agreement to purchase selected assets, including the customers, of TFG, a provider of resold international, interstate and intrastate interexchange services in the United States. Grant of the instant Petition

^{2/} Pending before the Commission is an application by Zone USA, Inc., Zone's immediate parent, for authority to provide global facilities-based and resold switched and private line telecommunications services between the U.S. and all permitted international points pursuant to Section 214 of the Communications Act, as amended. See Application No. IB2000000515 (filed July 14, 2000). Zone USA, Inc.'s application was placed on Public Notice on July 28, 2000. See Report No. TEL-00266S.

will allow Zone to acquire TFG's interLATA customer base in a manner that minimizes the impact on consumers while ensuring full compliance with the Commission's anti-slamming rules.

As noted above, TFG is, from a financial perspective, *in extremis*. Without immediate relief in the form of a qualified buyer, TFG is at risk to default on its senior credit facility, lose its key managerial employees, and suspend service to its customers:

- As of the date of this Petition, TFG has drawn \$6.8 million on a \$7 million line of credit that is scheduled to expire on August 31, 2000. 3/
- The total amount available to TFG under the line of credit is being reduced, resulting in the likelihood that the company will have overdrawn the facility by the end of this month.
- TFG, a reseller, owes past due amounts in excess of \$1.5 million to its underlying facilities-based carrier hosts. Because of these arrearages, the underlying carriers have the right under the parties' contracts to terminate service to TFG, thereby resulting in a loss of service to TFG's customers.
- In view of TFG's precarious financial position, absent immediate relief in the form of a sale to a qualified purchaser, the company is at risk of losing its key managerial and technical employees.

Provided the Commission is in a position to grant the relief requested in this Emergency Petition in an expeditious manner, Zone intends to send letters

3/ See Fourth Amendment to Amended and Restated Loan and Security Agreement between Commerce Bank and The Furst Group, Inc., attached hereto as Exhibit A.

to the subscribers being acquired from TFG to notify them of the carrier change. Presubscribed customers that have not already given their consent to a carrier change will be informed that (1) a carrier change is taking place; (2) the carrier change will not result in any charges to the customer; (3) the customer has the right to select a carrier other than Zone, but that changing to another provider may result in the customer incurring a fee; and (4) Zone has established an 800 number that customers can call with any questions. A copy of the form of this letter is attached hereto as Exhibit B.

Following the transfer to Zone of TFG's customer base, Zone also will provide customers with a follow-up letter which will contain additional information about Zone, as well as the service offerings available to customers.

DISCUSSION

Under Sections 64.1000-64.1190 of the Commission's rules, carriers are required to verify all preferred carrier change orders before executing such changes. The Commission has discretion and authority to grant a waiver of this requirement, however, if special circumstances exist and approval will serve the public interest. ^{4/} Zone requests a waiver because requiring it to obtain verification from each of the thousands of subscribers being transferred from TFG, before Zone can begin to provide service to those subscribers – and particularly in view of the risk that TFG will be forced to suspend service to its customers if a transaction with Zone is not completed in the near future – would impede the seamless transfer of those customers and disrupt their ability to place long distance and other calls.

^{4/} *WAIT Radio*, 418 F.2d at 1159.

Considering the size of TFG's subscriber base, Zone is unlikely to be able to affirmatively contact, solicit and obtain appropriate verification from each subscriber on an expeditious basis. Therefore, absent a waiver, in order to avoid running afoul of the Commission's slamming rules, Zone would be required to discontinue service to any subscriber that it is unable to contact before acquiring the assets of TFG.

As mentioned above, the TFG subscribers from whom verification would otherwise be required will receive prior notification of the change in service providers, and they will be informed that they are free to select another carrier. Customers will again be notified following the transfer through receipt of a follow up letter. Zone also will address and attempt to resolve all customer inquiries regarding the impact of the migration of their service and the change in providers. TFG will retain responsibility for addressing and resolving any customer complaints or other customer issues arising from the service provided prior to the transfer date. These steps will ensure that the rights of these subscribers are adequately protected.

Finally, the circumstances justifying this waiver request are similar to those the Commission has found sufficient as to many other similar petitions for waiver of the authorization and verification rules. ^{5/} In fact, the precarious

^{5/} See, e.g., *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996 – Sprint Comms. Co., Petition for Waiver*, CC Docket No. 94-129, Order, DA 99-2178 (rel. Oct. 20, 1999); *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996 – AT&T Corp. Petition for Waiver*, CC Docket No. 94-129, Order, 14 FCC Rcd 13925 (1999); *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996 – MCI*

financial position of TFG suggests an even greater urgency than exhibited in those cases for expeditious grant of this request.

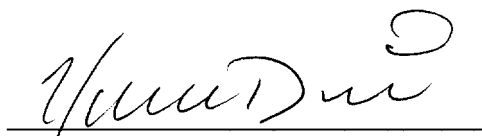
WorldCom, Inc., Petition for Waiver, CC Docket No. 94-129, Order, 14 FCC Rcd 12264 (1999).

CONCLUSION

For the foregoing reasons, Zone respectfully requests that the Commission waive Sections 64.1100-64.1190 of its rules to the extent necessary to permit the expeditious transfer of the interLATA subscriber base from TFG to Zone without first obtaining such subscribers' authorization and verification.

Respectfully submitted,

ZONE TELECOM, INC.

A handwritten signature in black ink, appearing to read "Mace J. Rosenstein", is written over a horizontal line.

Mace J. Rosenstein

Yaron Dori

Hogan & Hartson L.L.P.

555 Thirteenth Street, N.W.

Washington, D.C. 20004

Tel: (202) 637-5600

Its Attorneys

Dated: August 7, 2000

ATTACHMENT A

Gerard L. Grady
Vice President



August 1, 2000

Mr. Christopher J. Janis
Executive Vice President & CFO
The Furst Group, Inc.
459 Oakshade Road
Shamong, NJ 08088

Dear Chris:

Enclosed for you records is a fully executed (2 signature pages) copy of the Fourth Amendment to Amended and Restated Loan and Security Agreement, which extended the maturity date of the \$8,000,000 facility to August 31, 2000.

Sincerely,

A handwritten signature in cursive script, appearing to read "Jerry", written in black ink.

Gerard L. Grady
Vice President

Enclosure

GLG/tas

Commerce Bank, NA
1701 Route 70 East
Cherry Hill, New Jersey 08034-5400
856-751-7519 Tel.
856-751-8884 Fax.
E-mail: glgrady@yesbank.com

**FOURTH AMENDMENT TO AMENDED AND
RESTATED LOAN AND SECURITY AGREEMENT**

This Fourth Amendment to Amended and Restated Loan and Security Agreement ("Amendment") is made this 31st day of July, 2000 by and between The Furst Group, Inc., a New Jersey corporation ("Borrower"), and Commerce Bank, N.A., a national banking association ("Lender").

BACKGROUND

A. Borrower and Lender are parties to a certain Amended and Restated Loan and Security Agreement dated October 8, 1998 (as has been, and may hereafter be, amended or modified from time to time, the "Loan Agreement") pursuant to which Lender established certain financing arrangements for the benefit of Borrower.

B. Borrower has requested that Lender modify certain of the terms and conditions of the Loan Agreement and Lender has agreed to such modifications pursuant to the terms hereof and subject to the strict and timely compliance with the conditions set forth herein.

C. All terms not otherwise defined herein shall have the respective meanings ascribed thereto in the Loan Agreement.

NOW, THEREFORE, with the foregoing Background incorporated by reference herein and made a part hereof, the parties hereto, intending to be legally bound hereby, agree as follows:

1. Amendment to Loan Agreement. Section 1.1 of the Loan Agreement is hereby amended by deleting the definition of "Revolving Credit Maturity Date" and replacing it with the following:

Revolving Credit Maturity Date - August 31, 2000.

2. Affirmation of Collateral. Borrower hereby covenants, confirms and agrees that as security for the repayment of all Obligations, whether principal, interest, premium, fees or Expenses, Lender has and shall continue to have a continuing lien on and first security interest in the Collateral and a first priority mortgage on Borrower's Real Property and in the rents, issues and profits of the Real Property, all whether now existing or hereafter acquired, created or arising including, without limitation, proceeds, including insurance proceeds thereof. Borrower acknowledges and agrees that nothing herein contained in any way impairs Lender's existing rights or priority in such security.

3. Affirmation of Existing Documents. Borrower hereby ratifies and confirms all of the terms, conditions and provisions of the Loan Agreement and the other Loan Documents and agrees that except as expressly modified hereby, all such terms, conditions and provisions

continue unchanged and in full force and effect, without any defense, set-off, counterclaim or deduction of any nature. All references to the Loan Agreement in any other document shall mean the Loan Agreement, as amended hereby. To the extent of any inconsistency between the terms hereof and the Loan Agreement, the terms hereof shall control. Borrower agrees that nothing contained herein constitutes a novation of any of Borrower's Obligations to Lender.

4. Representations and Warranties. Borrower hereby represents and warrants to Lender that:

(a) Prior Representations. By execution of this Amendment, Borrower reconfirms all warranties and representations made to Lender under the Loan Agreement and the other Loan Documents and restates all such warranties and representations as of the date hereof, all of which shall be deemed continuing until all Obligations to Lender are paid and satisfied in full.

(b) Authorization. The execution and delivery by Borrower of this Amendment and the performance by it of the transactions herein contemplated are and will be within its powers, have been duly authorized by all necessary corporate action, and are not and will not be in contravention of any order of court or other agency of government, of law or, its articles of incorporation, bylaws or any indenture, agreement or undertaking to which it is a party or by which its property is bound, or be in conflict with, result in a breach of or constitute (with due notice and/or lapse of time) a default under any such indenture, agreement or undertaking or result in the imposition of any lien, charge or incumbrance of any nature or any of the properties of Borrower.

(c) Valid, Binding and Enforceable. This Amendment and any other instrument, document or agreement executed and delivered in connection herewith will be valid, binding and enforceable in accordance with its terms.

5. Covenants.

(a) Covenant Compliance. Borrower shall continue to observe and maintain compliance with all covenants of the Loan Agreement, the other Loan Documents and this Amendment.

(b) Costs and Expenses. Borrower shall pay on demand all costs and expenses, including, without limitation, the fees and expenses of Lender's counsel incurred by Lender in connection with (i) the preparation, documentation and negotiation of this Amendment and any subsequent amendments or modifications hereto and any other instrument, document or agreement required hereunder; or (ii) the enforcement, protection, perfection, preservation and defense of Lender's rights hereunder.

(c) Upset Fee. Borrower shall pay a nonrefundable fee ("Upset Fee") to Lender

in an amount equal to \$10,000 if the transactions contemplated under that certain _____ ("Definitive Agreement") between Borrower and e-KONG Group Limited dated as of July __, 2000 have not been consummated, as determined by Lender (in its sole discretion), on or before August 31, 2000, with such Upset Fee due and payable to Lender on September 1, 2000. Borrower hereby acknowledges that a true, complete and correct copy of the Definitive Agreement is attached hereto and made part hereof as Exhibit A, and that the Definitive Agreement has not been amended or modified in any manner. The Definitive Agreement shall be in form and substance satisfactory to Lender (as determined in Lender's sole and absolute discretion). Nothing herein contained constitutes Lender's consent to the transfer of any Collateral free and clear of Lender's Liens.

6. Acknowledgment of Indebtedness and Obligations. Borrower hereby acknowledges and confirms that as of the date of this Amendment, Borrower is indebted to Lender, without defense, setoff or counterclaim, under the Revolving Credit in the aggregate principal amount of \$6,821,476.28, plus continually accruing interest and all fees, costs and expenses, including reasonable attorneys' fees, incurred through the date hereof.

7. Effectiveness Conditions. The effectiveness of this Amendment is subject to the satisfactory completion, as determined by Lender, of the following conditions (all documents required to be delivered to Lender shall be in form and substance satisfactory to Lender and its counsel):

(a) Amendment. This Amendment executed and delivered by Borrower and Lender.

(b) Event of Default. There are no Defaults or Events of Default outstanding under the Loan Agreement.

(c) Acknowledgment of Sureties. Borrower shall cause each of the Sureties to execute and deliver their acknowledgment to this Amendment as set forth on the signature pages hereto.

(d) Lender's Expenses. Borrower shall have paid all expenses incurred by Lender (including, without limitation, attorneys' fees) in the preparation, negotiation and documentation of this Amendment.

(e) Extension Fee. Borrower shall have paid a nonrefundable extension fee to Lender in an amount equal to \$6,666

8. Miscellaneous Headings.

(a) Headings. The headings of any paragraphs of this Amendment are for reference only and shall not be used to interpret any provision of this Amendment.

(b) Successors and Assigns. This Amendment shall inure to the benefit of and be binding upon the successors and assigns of all of the parties hereto. No rights are intended to be created hereunder or under any related instruments, documents or agreements for the benefit of any third party beneficiary.

(c) Governing Law. This Amendment and all related agreements and documents shall be governed by and construed in accordance with the laws of the State of New Jersey.

(d) Severability. The validity or enforceability of any provision of this Amendment shall not affect the validity or enforceability of the remaining provisions.

(e) Consent to Jurisdiction. Borrower and Lender irrevocably consent to the jurisdiction of the courts of the State of New Jersey or the United States District Court for the State of New Jersey and any and all actions and proceedings whether arising hereunder or under any other agreement or undertaking and irrevocably agree to service of process by certified mail, return receipt requested to the address of Borrower and Lender contained in each other party's records.

(f) Waiver of Jury Trial. Borrower and Lender each hereby irrevocably waive any and all rights either may have to a jury trial in connection with any litigation commenced by or against Lender with respect to rights and obligations of the parties hereto.

(g) Counterparts. This Amendment may be executed in any number of counterparts, each of which shall constitute an original and all of which taken together shall constitute one and the same instrument. Signature by facsimile shall bind the parties hereto.

(h) Release. In consideration for Lender entering into this Agreement, Borrower, and by their execution below, Sureties, hereby waive and release and forever discharge and agree to indemnify and hold harmless Lender and its officers, directors, attorneys, agents and employees from any liability, damage, claim, loss or expense of any kind, that they may now have arising out of or relating to this Amendment, the Loan Agreement or any of the other Loan Documents or Lender's financing arrangements with Borrower and Sureties.

SIGNATURES ON FOLLOWING PAGE

IN WITNESS WHEREOF, the undersigned parties have executed this Amendment the day and year first above written.

THE FURST GROUP, INC.

By: [Signature]
Name: Christopher T. Jones
Title: SVP / CFO

COMMERCE BANK, N.A.

By: [Signature]
Name: GERARD L. GRASSI
Title: VICE PRESIDENT

Each of the undersigned has reviewed the terms of the Amendment in full and hereby consents to Borrower's execution and delivery of the Amendment and Borrower's performance of the obligations contained therein. Each of the undersigned acknowledges and agrees that Borrower's execution and delivery of the Amendment and Borrower's performance of the obligations contained therein do not in any way limit or impair Sureties' obligations to Lender under these certain Surety Agreements dated October 8, 1998, as amended, which are hereby ratified and confirmed.

Witness: _____
Name: _____

(SEAL)
JAMES D. KAYLOR

Witness: _____
Name: _____

(SEAL)
JOANNE M. KAYLOR

Witness: _____
Name: _____

(SEAL)
JOHN S. STREEP

Witness: _____
Name: _____

(SEAL)
KATHLEEN STREEP

IN WITNESS WHEREOF, the undersigned parties have executed this Amendment the day and year first above written.

THE FURST GROUP, INC.

By: _____
Name: _____
Title: _____

COMMERCE BANK, N.A.

By: _____
Name: _____
Title: _____

Each of the undersigned has reviewed the terms of the Amendment in full and hereby consents to Borrower's execution and delivery of the Amendment and Borrower's performance of the obligations contained therein. Each of the undersigned acknowledges and agrees that Borrower's execution and delivery of the Amendment and Borrower's performance of the obligations contained therein do not in any way limit or impair Sureties' obligations to Lender under these certain Surety Agreements dated October 8, 1998, as amended, which are hereby ratified and confirmed.

Witness: Sara Harper
Name: Sara Harper

James D. Kaylor (SEAL)
JAMES D. KAYLOR

Witness: Sara Harper
Name: Sara Harper

Joanne M. Kaylor (SEAL)
JOANNE M. KAYLOR

Witness: Marybeth Kibler
Name: Marybeth Kibler

John S. Streep (SEAL)
JOHN S. STREEP

Witness: Marybeth Kibler
Name: Marybeth Kibler

Kathleen Streep (SEAL)
KATHLEEN STREEP

ATTACHMENT B

[ZONE LETTERHEAD]

[Date]

Dear [Customer]:

As President of Zone Telecom, Inc., I want to take this opportunity to welcome you as a new customer. Zone Telecom and its affiliates are committed to providing high quality, technologically advanced telecommunications services to their customers, and we are committed to serving all of your communications needs.

Zone Telecom recently entered into an agreement to purchase selected assets from your existing long distance telecommunications provider, The Furst Group ("TFG"). As a result of this arrangement, Zone Telecom will be assuming the responsibility for handling all domestic long distance and international services currently provided to you by TFG. The transfer from TFG to Zone Telecom is expected to take place at the end of August. You will be notified in a subsequent letter that the transfer has taken place.

Zone Telecom is committed to ensuring that the transfer process is as smooth and transparent to you as possible. No charges will appear on your bill as a result of the transfer. You will continue to receive service under the same rates, terms and conditions that you have enjoyed up to now with TFG. The only change you may notice is that Zone Telecom's name will replace TFG's name on your bill.

The transfer of your account in this manner is subject to the approval of the Federal Communications Commission and the Public Utility Commission in the state in which you reside or in which your business is located. While you have the right to select another long distance carrier for your service needs, I want to assure you that Zone Telecom is committed to satisfying all of your requirements. We plan soon to make available an even wider array of products than you currently enjoy, and we expect that these products will lower the price you pay for domestic long distance and international service.

Zone Telecom is proud of the service it is capable of providing and looks forward to serving you in the future. If you have any questions about the content of this letter or any of the services Zone Telecom provides, please contact us at 1-800-233-4736. We look forward to serving you.

Very truly yours,

Derrick Bulawa
President and CEO
Zone Telecom, Inc.